

REMARKS

The Office Action mailed July 17, 2008, has been received and reviewed. Claim 1-5 are allowed. New claims 14-21 have been added. Claims 1-21 are currently pending in the application. Claims 6-13 stand rejected. Applicant has amended claim 6, and respectfully requests reconsideration of the application as amended herein. No new matter has been added.

Allowed Claims

Claims 1-5 are allowed. Applicant acknowledges this indication with appreciation.

New Claims 14-21

Applicant has added new claims 14-17 as software product claims of allowed claims 1-4.

Applicant has added new claims 18-21 as 35 U.S.C. §112, paragraph six, claims of now allowable claims 6-9.

Accordingly, Applicant believes new claims 14-21 are allowable in view of Applicant's allowed claims 1-4 and Applicant's allowable claims 6-9.

No new matter has been added.

35 U.S.C. § 102(e) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,771,700 to Razoumov et al.

Claims 6-13 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,771,700 to Razoumov ("Razoumov"). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The 35 U.S.C. § 102(e) anticipation rejections of claims 6-13 are improper because Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims. Since Razoumov does not describe, either

expressly or inherently, the identical inventions in as complete detail as are contained in the claims, Razoumov cannot anticipate under 35 U.S.C. § 102 the presently claimed invention of amended independent claim 6 and claims 7-13 depending therefrom.

Claims 6-13

Applicant's invention as presently claimed in independent claim 6, from which claims 7-13 depend, recites:

6. In a wireless communication system, a method comprising:
determining a first transmission energy setpoint to achieve a first transmission frame error rate *in a first transmission*;
adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission, wherein the first transmission error is received from a receiver;
determining a retransmission energy setpoint to achieve a retransmission frame error rate in a retransmission; and
adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission, wherein the retransmission error is received from the receiver. (Emphasis added.)

At least Applicant's claimed elements of "determining a first transmission energy setpoint from a first transmission to achieve a first transmission frame error rate *in a first transmission*" and "*adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission*" and "*adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission*" are not disclosed in Razoumov.

First, Applicant respectfully notes that while "*adjustments are made on occurrences of transmission errors*", Razoumov discloses adjustments based on occurrences of errors in a different transmission while Applicant claims adjustments based on occurrences of errors in that transmission. Applicant does not dispute that Razoumov discloses adjusting energy levels, however, Razoumov's approach is not the same approach for adjusting as claimed by Applicant in amended independent claim 6.

According to Razoumov, Razoumov's adjustments to the power level for a successive transmission is based upon the outcome (e.g., frame error rate) of the previous transmission. Specifically, Razoumov discloses the power levels of successive transmissions (e.g., retransmission 1, retransmission 2, etc.) are based upon the outcome of the previous transmissions (e.g., transmission, retransmission 1, etc.) and not based upon the outcome of that same transmission. (Razoumov, col. 4, lines 30-40, col. 3, lines 62-63 and col. 7, formula 22).

In other words, Razoumov discloses adjusting a subsequent transmission's power level based upon the outcome of the immediately **previous** transmission.

In distinct contrast, Applicant's invention as claimed in amended independent claim 6 recites, in part, "*adjusting the **first transmission** energy setpoint on occurrence of a **first transmission error in the first transmission***" and "*adjusting the **retransmission** energy setpoint on occurrence of a **retransmission error in the retransmission***". Accordingly, Applicant's invention as presently claimed in amended independent claim 6 is not disclosed in "as complete detail as is contained in the claim" as is required for anticipation under 35 U.S.C. §102. Therefore, Razoumov **cannot** anticipate under 35 U.S.C. §102 Applicant's invention as presently claimed in amended independent claim 6, and claims 7-13 depending therefrom.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

CONCLUSION

Claims 1-21 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned representative.


Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated:

10/14/2008

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